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Safeguarding the independence of judicial systems in the face of contemporary challenges to democracy

Report of the Special Rapporteur on the independence of judges and lawyers, Margaret Satterthwaite*

Summary

The present report was prepared by the Special Rapporteur on the independence of judges and lawyers described in the context in which, for 2024 people in more than 60 countries—encompassing nearly half the world's population—will vote. However, research indicates that democracy is in decline around the globe, and elections alone do not guarantee meaningful democracy.

The Special Rapporteur provides a brief account of the challenges to democratic governance worldwide, briefly outlines the international legal standards enshrining the human right to participate in political life and the importance of the rule of law and judicial independence in protecting that right.

The Special Rapporteur then examines the vital role played by the legal professionals who comprise the justice system—judges, prosecutors, and lawyers, as well as community justice workers—in safeguarding democracy. She also explores the threats and obstacles that they face in carrying out this work.

Finally, the Special Rapporteur makes recommendations to States and justice system actors concerning the steps they can take to resist autocratic trends and to advance participatory governance.

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* The present report was submitted to the conference services for processing after the deadline so as to include the most recent information.

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I. Introduction[1]

1. The world is at a crossroads for participatory government. The UN High Commissioner for Human Rights has described 2024 as a "mega election year", in which people in more than 60 countries—encompassing nearly half the world's population—will vote.[2] Yet despite this apparent prevalence of democratic elections, research indicates that democracy is in decline around the globe.[3] In 2023, the level of democracy enjoyed by the average person plummeted to levels last witnessed in 1985.[4] Elections alone do not guarantee meaningful democracy. 3.5 billion people live in countries where multi-party elections occur but lack sufficient safeguards to ensure they are free and fair.[5] Evidence suggests that other components of effective and accountable participatory government are also faltering. Most of the world's countries saw weakening rule of law in 2023, and in the same year the ability of judiciaries to effectively check excesses by other government branches fell in 56% of countries.[6]

2. There are various elements that characterize democratic governance, including free and fair elections, inclusive citizenship, and civil and political rights that allow people to exchange information about candidates, form and participate in political organizations, and engage in peaceful protests.[7] In aggregate, these factors ensure that

[1] The Special Rapporteur thanks Katarina Sydow, Aloysia Sonnet, Ben Polk, María Alejandra Torres and her students at New York University School of Law for their support in preparing the present report. She thanks AJJF, ALG, DPLF, IBAHRI, Namati, YLBHI, for their support in organizing regional consultations. They bear no responsibility for the final content.

[2] "Mega election' 2024 could be a landmark for democracy: UN rights chief".

[3] V-Dem, "Democracy Report: Democracy Winning and Losing at the Ballot", p. 9; World Justice Project (WJP), "Rule of Law Index: 2023 Insights, p. 10; International IDEA, "The Global State of Democracy 2023: The New Checks and Balances", p. 8.

[4] V-Dem, "Democracy Report: Democracy Winning and Losing at the Ballot", p. 9.

[5] Ibid.

[6] WJP, note 3, p. 4.

[7] Lührmann, Anna, Marcus Tannenberg, and Staffan I. Lindberg, "Regimes of the World (RoW): Opening New Avenues for the Comparative Study of

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governments are chosen by, and accountable to, the people. By contrast, autocratic or authoritarian governance is marked by the lack of free and fair elections and the inability of the people to limit the power of Government officials or hold them to account.[8]

3. Justice systems promote and protect a fundamental value that undergirds participatory governance: the rule of law.[9] This principle insists, *inter alia*, that all people, even state actors, are subject to the same laws, applied fairly and consistently.[10] Realizing this principle generally involves dividing state power into distinct branches, with the judiciary serving to ensure that executive and legislative actions do not exceed the limits of the Constitution and law.

4. To carry out this work effectively, justice systems must be independent of political control. At times, politicians have contested the importance of independent judicial checks on their power, arguing that judicial institutions undermine the will of "the people".[11] The Special Rapporteur observes that constraints on elected power ensure that officials act within the law and remain answerable to the people long after they are elected. Such constraints are also necessary for the fundamental rights and diverse interests of everyone living in a State, including marginalized people and communities who may otherwise be overlooked, excluded, or persecuted by the majority. These constraints also protect civil society organizations and minority political parties that are critical of the Government. By upholding the rights of all, independent judiciaries, along with other institutions of democracy, ensure that a plurality of perspectives are given voice in society, that governments are accountable and responsive to everyone, and that the dignity of individuals is preserved against the might of the State.[12]

5. This report focuses on trends that pose a risk to the ability of the judicial system to uphold the rule of law that constitutes the foundation of democratic governance. The Special Rapporteur deploys the concept of "autocratization" to describe a move away from meaningful exercise of participatory governance and democratic values, and the report focuses on how such moves can occur through the decline of independent judicial systems.[13]

Political Regimes", Politics and Governance, 6:1 (2018) 60-77, p. 62.

[8] Ibid, p. 63.

[9] "New Vision of the Secretary-General for the Rule of Law" (2023); ACHPR/Res.21(XIX)96; Inter-American Democratic Charter, art. 2.

[10] S/2004/616: "The *rule of law* is a concept at the very heart of the Organization's mission. It refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency".

[11] Lacey, Nicola. "Populism and the Rule of Law" (2019). Issacharoff, Samuel. "Judicial Intercession," in Democracy Unmoored: Populism and the Corruption of Popular Sovereignty (2023).

[12] I/A Court H.R., *Case of López Lone et al. v. Honduras*. Judgment of September 2, 2016, para. 201 ("judicial independence, including within the Judiciary, is closely related not only to the consolidation of the democratic system, but also seeks to preserve the human rights and freedoms of every citizen").

[13] The concepts of autocratization and democratic backsliding are widely used by scholars and policy analysts around the world. Monsiváis-Carrillo, A.

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6. The report provides a brief account of the challenges to democratic governance worldwide, before outlining the international legal standards enshrining the human right to participate in political life and the importance of the rule of law and judicial independence in protecting that right. The report then examines the vital role played by the legal professionals who comprise the justice system—judges, prosecutors, and lawyers, as well as community justice workers ("CJWs")—in safeguarding democracy, before exploring the myriad threats and obstacles that they face in carrying out this work. Finally, the Special Rapporteur makes recommendations to States and justice system actors concerning the steps they can take to resist autocratic trends and to advance participatory governance. The report draws on more than 89 submissions from academia and civil society,[14] as well as data from five online consultations with interlocutors from 43 countries.[15]

II. Contemporary challenges to democracy

7. Overt challenges to participatory governance have often taken the form of revolution or coups d'état.[16] In recent decades, subtler challenges to democracy have become increasingly common.[17] In some instances, legitimately elected leaders (at least in the first instance) wield their power to debilitate or eliminate democratic institutions and rights. Such leaders might, for example, seek to undermine the institutions responsible for ensuring free and fair elections, or restrict individual freedoms of expression, association, or information.

8. This report focuses on the subset of these efforts that target justice systems and institutions, which hinder justice sector personnel from playing their indispensable role in protecting the rule of law and democratic processes, or that even co-opt the judicial apparatus for deployment against political opponents. These attacks may lack the dramatic tumult of the coup d'état, but they are a threat to the equal and inalienable human rights that serve as the foundation for freedom, justice, and peace in the world. The Rapporteur notes that these dynamics can also take place in countries where leaders have come to power through means other than elections. In such circumstances, their hallmark remains the same: a slide away from independent judiciaries and toward politically-inflected institutions that are at risk of being unable to play their key role in ensuring the rule of law.

Autocratización. Prontuario de la Democracia; Lhérété, Héloïse. « Un monde moins démocratique ? », Jean-Vincent Holeindre éd., *La Démocratie. Entre défis et menaces*. Éditions Sciences Humaines, 2020, pp. 107-116.; V-Dem, "Democracy Report: Democracy Winning and Losing at the Ballot; Huertas, Julian, "Protecting Individual Rights to Counteract Democratic Backsliding: Human Rights Law as a Partial Response to Autocratic Populism", *Proceedings of the 116th Annual Meeting of the American Society of International Law* (2022), p. 137. WJP reports that "[a]uthoritarian trends spurred the global rule of law recession starting in 2016". WJP, note 3, p. 33.

14 The submissions are available on the website at OHCHR | Call for input of the Special Rapporteur on the independence of judges and lawyers for the next thematic report on safeguarding the independence of judicial systems in the face of contemporary challenges to democracy

15 The Rapporteur undertook online consultations with judges, lawyers, CJWs and representatives of civil society based in the following regions: Africa, Asia, Latin America, and Europe. She also undertook a consultation with members of the global Grassroots Justice Network.

16 Bermeo, Nancy. "On Democratic Backsliding" (2016).

17 Ibid.

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III. Legal standards

9. Participation in political life is an essential human right, as well as a vital tool for protecting and advancing other fundamental human rights. Article 21 of the Universal Declaration of Human Rights (UDHR) provides that "[e]veryone has the right to take part in the government of [their] country, directly or through freely chosen representatives."[18] The International Covenant on Civil and Political Rights (ICCPR) affirms that every citizen shall have the right and the opportunity "[t]o vote and to be elected at genuine periodic elections [that reflect] the free expression of the will of the electors,"[19] and also requires State parties to ensure the civil and political rights necessary for meaningful elections, including freedom of opinion, expression, information,[20] and association.[21] Other international human rights treaties affirm every person's right to participate equally in public life, free from discrimination on the basis of race, colour, national and ethnic origin,[22] gender,[23] disability,[24] and other axes of discrimination. The Special Rapporteur observes that judges, lawyers, and courts play an essential role in protecting these, and other, rights and freedoms.

10. International law also affirms the principle of the rule of law, requiring governments to act only in accordance with the power vested in them by the people. The UDHR deems it "essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law."[25] And the ICCPR requires respect for this principle when it states that "[a]ll persons are equal before the law and are entitled without any discrimination to the equal protection of the law."[26]

11. The rule of law requires judicial independence, and judicial independence plays an important role in securing participatory rights.[27] If judges are not independent, they may struggle to apply the law equally to powerful political actors, or to uphold fundamental democratic rights in the face of government pressure. International human rights law requires States to guarantee judicial independence. Article 14 of the ICCPR provides that every person has the right to be heard by an independent and impartial tribunal, established by law, in the determination of any criminal charge against them, or of their rights and obligations in a suit at law.[28] The Human Rights Committee has clarified that a "tribunal" designates a body that is independent of the executive and legislative branches of government, or which enjoys in specific cases judicial independence in proceedings that are judicial in nature.[29] To be independent, a tribunal must be insulated from political interference by the government. Justice systems that are structurally and functionally dependent on political bodies are at greater risk of political capture. The Human Rights Committee has opined that a "situation where the functions and competencies of the judiciary and the executive are not clearly distinguishable or where the

18 DHR Article 21(1).
19 ICCPR Article 25(b).
20 ICCPR Article 19.
21 ICCPR Article 22.
22 CERD Article 5(c).
23 CEDAW Article 7.
24 CRPD Article 29.
25 UDHR Preamble.
26 ICCPR, Article 26.
27 HRC, General Comment 25, para. 20.
28 ICCPR Article 14(1).
29 HRC, General Comment 32, para. 18.

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latter is able to control or direct the former is incompatible with the notion of an independent tribunal."[30]

12. The fundamental interdependence of participatory governance, rule of law, and judicial independence has been recognized on multiple occasions by the United Nations. A Resolution adopted on 8 November 2007 by the United Nations General Assembly reaffirmed that "… human rights, the rule of law and democracy are interlinked and mutually reinforcing"; they "belong to the universal and indivisible core values and principles of the United Nations."[31] Similarly, this mandate has highlighted that "respecting the rule of law and fostering the separation of powers and the independence of justice are prerequisites for the protection of human rights and democracy".[32] These linkages have also been affirmed in the Sustainable Development Goals, which includes targets on promoting the rule of law at the national and international levels, ensuring equal access to justice for all,[33] and ensuring responsive, inclusive, participatory and representative decision-making at all levels.[34] Furthermore, the role of independent judges in upholding human rights, the rule of law, and the separation of powers, has been recognized by regional human rights courts.[35]

IV. The role played by judges, prosecutors, lawyers, and community justice workers in safeguarding democracy

13. Justice systems play an essential role in safeguarding democracy: from ensuring that free and fair elections and the peaceful transfer of power take place; to enforcing key civil and political rights; to ensuring that the law is applied equally to all people, including State officials; to checking excessive power of political actors. The work of these systems is carried out by people. In this section, the Special Rapporteur examines the specific roles played by various justice personnel—judges, prosecutors, lawyers, and often CJWs—in ensuring that governments work for the people, represent their views, and respect their rights.

14. Justice personnel play a critical role in ensuring free and fair elections. Specific roles vary across legal and electoral systems: CJWs may educate voters on electoral processes and their voting rights[36]; CJWs and lawyers may observe and monitor polling places; and lawyers often represent citizens who contest violations.[37] Prosecutors may bring criminal charges for electoral misconduct that rises to the level of crime, such as fraud or voter harassment. Judges adjudicate disputes regarding the fairness and lawfulness of electoral proceedings, from voting district boundaries and candidate eligibility to campaign finance rules and electoral procedures and accessibility.[38] In some systems,

30 HRC, General Comment 32, para. 19.
31 A/RES/62/7.
32 A/HRC/35/31, para. 16
33 Target 16.3.
34 Target 16.7.
35 Corte IDH. Camba Campos y otros Vs. Ecuador. 28 Agosto 2013. Serie C No. 268, para 221 (asserting that dismissing all members of the Constitutional Tribunal destabilized Ecuador's democracy by compromising the separation of powers, crucial for safeguarding human rights and freedoms); Submission of European University Institute ("EUI").
36 Submission of Kariobangi Paralegal Network.
37 The Electoral Knowledge Network.
38 Human Rights Committee ("HRC"), General Comment 25, para. 20; Submission of International Bar Association's Human Rights Institute ("IBAHRI").

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such disputes are heard in specialized electoral tribunals that resolve disputes concerning electoral outcomes, while in others, they are heard in ordinary courts.[39]

15. Outside of elections, justice personnel act to ensure that elected officials in the executive and legislative branches do not exceed the authority granted to them by the people. Courts regularly adjudicate claims by individuals that State authorities have improperly or unlawfully applied the law.[40] And in many countries, courts possess the power of judicial review: to evaluate the constitutionality of laws and executive acts and to strike them down if they exceed such bounds. Judicial review may also assess compliance with international human rights law,[41] and may be especially important when evaluating executive claims that existential threats, such as terrorism or national security risks, justify suspension of constitutional rules or individual rights. Justice systems thus can serve as a bulwark against undemocratic usurpations of power by the executive branch in times of real or perceived emergency.

16. Prosecutors check power outside of elections by holding State actors accountable when evidence demonstrates that they have committed crimes such as corruption, bribery, or gross human rights violations. Private lawyers may seek redress for clients for individual violations of human rights. CJWs work with communities to identify avenues and resources for seeking justice for such violations.

17. The Special Rapporteur observes that fulfilment of each of the protective functions described above requires access to independent courts, to enable claimants to raise claims challenging the constitutionality of legislation or the legality of executive acts.

18. But independent courts alone are insufficient. Individuals seeking redress must also have access to support from lawyers able to exercise their profession without restriction, fear or harassment. Lawyers must be free to represent clients without regard to status or affiliation, including members of racially, ethnically, nationally, religiously, or otherwise marginalized groups. And CJWs should have the freedom to accompany communities in their quest for human rights.

19. Judges, prosecutors, lawyers, and CJWs play key roles in upholding the rule of law and protecting fundamental human rights, throughout the election cycle, and beyond. In doing so, they are an indispensable part of a system in which the separation of powers and meaningful democratic governance are secured. However, as a result of their essential work in upholding democratic values, justice personnel face threats to the free and independent exercise of their professional activities. These are explored in detail in Section V.

V. Obstacles, risks, or challenges faced by judges, prosecutors, lawyers and community justice workers when defending the rule of law and fundamental human rights

20. States plainly have the right—and the duty, when systems are not performing well—to make changes to justice systems to ensure their efficacy and improve access to justice. However, these changes must not have the effect of infringing the rule of law or the protection of

39 The Electoral Knowledge Network.
40 Submission of IBAHRI.
41 Ibid.

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fundamental human rights.[42] Where State acts weaken the independence of the judiciary, the autonomy of the prosecution, or the free exercise of the legal profession, this may undermine the capacity of these systems to play their part in securing meaningful democratic governance, as described above.

21. Government authorities who seek to undermine judicial constraints on their power employ a range of strategies. These include conduct that targets individual justice personnel because of their work defending democratic values, systemic legal changes that improperly undermine the independence or capacity of judicial systems and institutions to uphold the rule of law, and the co-optive use of justice systems and institutions to intimidate, harass and punish justice personnel who might otherwise check their power.

22. In this section, the Special Rapporteur includes examples of conduct that risks eroding the separation of powers or weakening the ability of courts to play their role in upholding the rule of law and fundamental rights. She observes that the impact of these acts on a specific State's overall direction of travel—towards or away from the meaningful exercise of participatory governance—must be assessed in the context of the national system as a whole. That exercise is outside the scope of this report.

A. Modifying to capture or curb justice institutions

1. Capturing or curbing courts

23. One systemic threat to participatory governance is the improper increase of executive or legislative control over courts and judges. By eroding the separation of powers, the independence and legitimacy of courts can be undermined, along with their capacity to act as a check on political power. The Special Rapporteur refers to this phenomenon as "capture" of courts. Court capture poses an especially serious risk to democratic values when it occurs in apex and constitutional courts, which often play the most important role in checking State power, reviewing the legality and constitutionality of government acts, and adjudicating electoral disputes. However, court capture can impact courts and rights-holders throughout the justice system.

24. Two types of ostensible reforms herald the possibility of capture; although such reforms do not dispositively indicate capture, they should be scrutinized to ensure that their aims and expected impacts are not undemocratic. The first is when the rules governing judicial appointments are altered to increase the influence of the executive and/or legislative branches. In States where judicial councils[43] are responsible for appointing judges, risks of capture can arise when political branches acquire more control over how council members are appointed or removed,[44] when the composition of the council is changed to include representatives or affiliates of the political branches,[45] or when the council is dissolved or replaced, as occurred in Tunisia in 2022.[46] In all States, there is a risk of capture when laws or practice increase the direct role of the executive or legislative branch in judicial

[42] Ferejohn, John, and Larry D. Kramer. "Judicial independence in a democracy: institutionalizing judicial restraint." *Norms and the Law* (2006): 161-207.

[43] See A/HRC/38/38.

[44] Submission of Nulai.

[45] Submission of EUI.

[46] Human Rights Watch, "Tunisia - Events of 2022"; AL TUN 5/2022.

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appointments. Capture may take place overtly, as in Myanmar, where the State Administration Council dismissed several Supreme Court justices and replaced them with individuals affiliated with the military.[47] Finally, there is a risk of court capture where laws establish that the political branches should be involved in selecting judges to hear certain, politically-sensitive cases. The mandate has expressed concern to the People's Republic of China about the duty of the Hong Kong Chief Executive to designate a list of judges to hear national security cases.[48] Whatever the reform, the risks of court capture are increased by any change in law or policy that alters the rules of judicial selection to increase the possibility of appointment on the basis of judges' (perceived) political affiliation and decrease the role of objective, merit-based criteria and processes.[49]

25. The second type of reform that increases the risk of court capture through changing the composition of the judiciary is the creation of new judicial vacancies, either by expanding the size or number of courts or by removing existing judges.[50] Examples include attempts to remove or impeach sitting judges, laws that make it easier for the political branches of power to remove judges,[51] the refusal of a new administration to recognize judges appointed by a predecessor,[52] or the implementation of new laws that apply a novel or lowered compulsory retirement age to sitting judges.[53] In Hungary, legislation that lowered judges' mandatory retirement age from 70 to 62 years of age led to the early retirement of more than 200 judges.[54] The executive may also purport to impose a judicial term limit, or alter a sitting judge's length of service.[55] Judicial councils may also be impacted by the creation of vacancies. The Peruvian Congress removed multiple members of the National Board of Justice (JNJ) in 2024, pursuant to an imprecise set of legal provisions that risked violating the JNJ's independence.[56]

26. Expanding the number or size of courts may create vacancies and may also occasion changes in the appointment process that increase the influence of the executive or legislative branches. A particularly concerning practice is the creation of new courts or chambers (often with more politically-inflected appointment methods), or the adoption of specific procedures for designating judges when they are given jurisdiction over sensitive issues such as counter-terrorism or national security. Submissions reported that judges in such separate security courts often are hastily appointed by the executive branch and may have high conviction rates, sometimes even reaching 100 percent.[57]

47 AL OTH 74/2023; Human Rights Watch, "Our Numbers Are Dwindling": Myanmar's Post-Coup Crackdown on Lawyers.

48 CCPR/C/CHN-HKG/CO/4; OL CHN 2/2023; Submission of The 29 Principles.

49 Basic Principles on the Independence of the Judiciary, principle 10. (See A/HRC/38/38, paragraph 49).

50 Submission of IBAHRI; Submission of Stichting Justice Square ("SJS").

51 Submission of Due Process of Law Foundation ("DPLF").

52 A/HRC/38/38/Add.1, para. 23; AL POL 1/2017.

53 Submission of IBAHRI, EUI.

54 ECJ, Judgment of 6 November 2012, *Commission v. Hungary,* C-286/12; *Baka v. Hungary* App no 20261/12 (ECtHR 23 June 2016); AL HUN 1/2012.

55 AL KIR 1/2023; Commonwealth Lawyers Association, "Statement on the attempted deportation and arbitrary detention of High Court Judge David Lambourne, the continued suspension of the Chief Justice of Kiribati and the continuing disregard for Judicial Independence in Kiribati".

56 AL PER 6/2023; Human Rights Watch, "Perú: El Congreso avasalla el Estado de derecho", (11 March 2024).

57 Submission of CFJ and EFHR; Submission of 29 Principles; Submission of Syrians for Truth and Justice.

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New courts may also be granted significant powers in relation to democratic processes or institutions, or control over other actors in the justice system. In Poland, a new Extraordinary Control and Public Affairs Chamber of the Supreme Court was created, with exclusive jurisdiction over electoral disputes, election results, and complaints and questions of law concerning the lack of independence of a court or judge[58]; the new chamber was also given the power to review any final judgment issued by Polish courts in the preceding 20 years.[59]

27. Capture can even occur in circumstances where no judicial vacancies are created. If vacancies are likely to be filled by more independent judges, reducing the size of courts to eliminate those vacant posts may concentrate the influence of judges seen to be loyal to the political branches. Similarly, capture may arise where there are no new judicial appointments when the State assumes greater control over methods of appointing certain key figures within the judiciary, such as the Chief Justice or court presidents.

28. In lieu of increasing control by the political branches of the judiciary, steps that reduce the judiciary's overall power risk negating the capacity of justice systems to uphold the rule of law. Reforms that curb court strength may include removing or restricting courts' jurisdiction to review legislation or executive acts; limiting judicial oversight or scrutiny in certain categories of politically-sensitive cases, such as those involving terrorism offences or immigration and asylum claims;[60] authorizing executive or legislative branches to override court decisions; mandating less stringent standards of review; or passing legislation shielding ordinary law from constitutional review.[61] Efforts to reduce the power of the judiciary may also take the form of significant resource reductions or workload increases,[62] or preventing or delaying publication of court decisions to limit the judiciary's impact.[63] Finally, measures to curb and capture courts may proceed in tandem, such as a State policy of refusing to apply court rulings until steps are taken to change the composition of the court.

29. Legal changes that alter how judges are appointed or removed or that impact the administration or operation of the courts are not necessarily indicative of capture. Such changes can be pursued for legitimate reasons and with safeguards for judicial independence. But if such changes increase the influence of political viewpoints or affiliations in the daily work of courts and judges, they should be interpreted as increasing the risk of autocratization through the capture or curbing of courts.

2. Capturing or curbing bar associations

30. Courts are not the only legal institutions vital to safeguarding democracy. International norms recognize the right of lawyers to form and join self-governing professional associations.[64] Bar associations—professional bodies responsible for regulating the conduct and often

58 ECJ, Judgment of 5 June 2023, *Commission v. Poland (IV),* C-204/21.

59 Report of the Special Rapporteur on the independence of judges and lawyers on his mission to Poland (5 April 2018), A/HRC/38/38/Add.1, paragraphs 59-62.

60 Submission of Law Society of England and Wales.

61 AL HUN 3/2013; Human Rights Watch, "Wrong Direction on Rights - Assessing the Impact of Hungary's New Constitution and Laws". Venice Commission, Opinion on the Fourth Amendment to the Fundamental Law of Hungary, 95th Plenary Session, Venice, June 2013, para 87.

62 AL SLV 2/2023; Submission of Cristosal.

63 A/HRC/38/38/Add.1, para. 32.

64 Basic Principles on the Role of Lawyers, Principle 24.

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licensing of lawyers—function to ensure the legal profession's independence and quality.[65] This, in turn, enables lawyers to play their role in protecting the rights of their clients, including by making claims against the State, without interference or intimidation.

31. Consequently, bar associations may be targeted by State actors threatened by the independence of the legal profession. Potential capture efforts include attempts to exert control over or appoint bar association leadership,[66] to authorize other bodies to investigate bar associations,[67] or to arbitrarily review member qualifications.[68] For example, submissions and consultations identified instances of independent lawyers' associations being placed under the control of State-led national bars, which may censor and prohibit publications, or wield authority to administer unannounced examinations of lawyers on various subjects, irrespective of lawyers' specialties, resulting in disbarment for failures.[69] In the Russian Federation, proposed amendments to the law establishing the bar association would transfer authority to the Ministry of Justice to request disciplinary sanctions against lawyers and control qualification examinations; such measures could be used to target lawyers involved in sensitive or politically-charged cases.[70]

32. Efforts to curb include attempts to restrict a bar association's ability to defend its members or criticize the government,[71] or measures authorizing and even encouraging the creation of competing bar associations, which can that fragment lawyers' collective power and undermine quality control.[72]

33. All the steps described above create the risk that lawyers will be registered, disciplined or disbarred for reasons other than their professional qualifications and adherence to ethical and professional standards. These reasons could include their political affiliation, their work to defend fundamental democratic rights, or their representation of clients in politically sensitive cases. If lawyers' rights are not protected by strong, independent bar associations, the number and quality of lawyers available to carry out this essential work may be diminished.

B. Abusing justice systems to influence or control

34. Existing legal institutions, procedures, and laws are sometimes misused to exert undue political influence over justice actors. Such misuse may take the form of criminal prosecution, administrative disciplinary processes, or the use administrative or management decisions to punish and reward judges and prosecutors. When these methods are used to intimidate, influence, or punish judges, prosecutors, or lawyers solely or primarily for political reasons—such as their work to uphold the rule of law and hold Government officials to account, or their perceived association with opposition figures or pro-democracy ideals—this constitutes a significant threat to the rule of law and democracy.

65 A/73/365.
66 Submission of Defenders Belarus.
67 A/HRC/44/47/Add.1, para. 82-83. Submission of Maat for Peace.
68 Submission of Maat for Peace.
69 Submission of Initiative 2018, Defenders Belarus.
70 OL RUS 1/2024
71 Submission of Maat for Peace.
72 A/HRC/35/31/Add.1, para. 64; Submission of International Association for Human Rights Advocacy in Geneva ("IAHRAG").

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35. The actions described in this section can be distinguished from the disparagement, attacks and interference described in section c below. In section c, the Special Rapporteur outlines circumstances that, on their face, appear to be improper incursions on judicial independence and the free exercise of the legal profession. In this section, the Rapporteur explores situations that could be characterized as appropriate uses of criminal, judicial or disciplinary systems but which may in fact constitute abuse of those systems as part of disguised attempts to interfere with the legitimate exercise of the professional activities of judges, prosecutors and lawyers.[73]

1. Politically-motivated Prosecution of Judges, Prosecutors, Lawyers, and CJWs

36. Judges and prosecutors who are perceived as threatening to State authorities may become the target of criminal prosecution by captured justice actors. Criminal prosecution may target those justice actors who have handled cases concerning public corruption or government violations of human rights, thus discouraging judges and prosecutors from holding the State accountable to the law. This has been described as "a strategy to secure impunity".[74] Judges and prosecutors who have been involved in such cases may see their immunity protections rescinded, allowing charges to be brought pertaining to their professional work. Justice actors may also face criminal charges that seem to be unrelated to their professional work, but which are motivated by political ends.[75] At times, these criminal prosecutions end in conviction and punishment.[76] Such actions highjack the prosecutorial function, transforming it into a tool of repression. Captured courts sometimes use repressive prosecution on a broad scale. In Türkiye, thousands of judges and prosecutors were arrested and dismissed in the years after the attempted coup in 2016, as part of what the OHCHR called “collective” and “arbitrary” acts.[77]

37. Private lawyers and CJWs can also face repressive prosecution for their professional work. In some cases, lawyers viewed as aligned to the political opposition or representing opposition political figures or human rights defenders may be vulnerable to politically-motivated criminal prosecution. Consultations for this report indicate that lawyers seeking accountability for crimes allegedly committed by political leaders have also been criminalized. In other cases, lawyers may be targeted, including through administrative and civil proceedings, for representing marginalized groups in politicized environments. Namati reported that in various countries, CJWs have been the subject of defamation charges and SLAPP suits,[78] a practice condemned by the Inter-American Court of Human Rights as an “abusive use of judicial mechanisms” that undermines democratic oversight by society.[79]

38. This mandate, along with others, has expressed concern to the People’s Republic of China about its use of “Residential Surveillance at

[73] See A/75/172.

[74] Cyrus R. Vance Center for International Justice, "Criminalization of Justice Operators in Guatemala as a Strategy to Secure Impunity". (December 2022).

[75] Submission of Be Just.

[76] Submission of SJS.

[77] OHCHR, “Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East”, paras. 48-55; Submission of SJS; See also AL TUR 5/2017.

[78] Submission of Namati.

[79] I/A Court H.R., *Baraona Bray Vs. Chile,* Judgment of 24 November 2022, paras. 90-91.

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a Designated Location" (RSDL) in relation to human rights lawyers prosecuted for their professional activities. Unfortunately, this practice has been codified and accepted by the national courts as a form of permissible detention. The conditions of detention entailed in RSDL are equivalent to incommunicado detention and place those detained at a heightened risk of torture and other inhuman and degrading treatment.[80]

39. The politicized deployment of criminal law and legal institutions against judges, prosecutors, lawyers, and CJWs can have a system-wide impact on the rule of law. Criminalization demonstrates that judges, who are assigned the role of upholding a fair legal system, are personally vulnerable to punishment for carrying out their professional responsibilities. It can have a chilling effect on prosecutors, making them reluctant to bring cases against powerful political figures. And it may induce or enhance a climate of fear among lawyers who defend individuals against the State and may even discourage these individuals from invoking their right to counsel.[81] Finally, targeting CJWs is detrimental to their lives and livelihoods and "creates a deterrent effect" for other justice workers.[82]

2. Instrumentalizing discipline, removal, and disbarment

40. Judges, prosecutors, and lawyers are all bound by professional standards enforced by disciplinary bodies. Judges are required to act independently and competently, and to "exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary".[83] Prosecutors, as "essential agents of the administration of justice", must "maintain the honour and dignity of their profession."[84] And lawyers should "act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession".[85]

41. Appropriate processes for disciplining judges, prosecutors and lawyers are informed by clear international norms. These provide that disciplinary charges shall be processed expeditiously and fairly under consistent procedures, and that those facing disciplinary charges shall have the right to a fair hearing.[86] Disciplinary decisions should be subject to independent review.[87] Where decisions concern lawyers, international norms make clear that this should be an independent judicial review.[88] Disciplinary proceedings should be determined in accordance with applicable laws, international norms, and established standards of professional conduct.[89]

80 UA CHN 3/2017, OL CHN 15/2018, AL CHN 20/2020, UA CHN 6/2020, AL CHN 16/2020, AL CHN 20/2020, AL CHN 8/2022, AL CHN 10/2022, AL CHN 5/2023; ISHR, "Several questions about 'Residential Surveillance at a Designated Location'"; Submission of 29 Principles.

81 Submission of Aministia I llibertat.

82 Submission of Namati.

83 Bangalore Principles of Judicial Conduct, Principle 1.6.

84 Guidelines on the Role of Prosecutors, Guideline 3.

85 Basic Principles on the Role of Lawyers, Principle 14.

86 Basic Principles on the Independence of the Judiciary, Principle 17; Guidelines on the Role of Prosecutors, Guideline 21; Basic Principles on the Role of Lawyers, Principle 27.

87 Basic Principles on the Independence of the Judiciary, Principle 20 (with the caveat that this principle may not apply to the decisions of the highest court and those of the legislature in impeachment or similar proceedings); Guidelines on the Role of Prosecutors, Guideline 21.

88 Basic Principles on the Role of Lawyers, Principle 28.

89 Basic Principles on the Independence of the Judiciary, Principles 18 and 19; Guidelines on the Role of Prosecutors, Guideline 22; Basic Principles on the Role of Lawyers, Principle 29.

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42. Disciplinary bodies are important both for ensuring that professional standards are upheld and for protecting the independence of the judiciary and the free exercise of the legal profession. The Basic Principles on the Role of Lawyers provide that "disciplinary proceedings against lawyers should be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court."[90] No matter the form, such authorities must be "free from any influence or pressure from the legislative or the executive branches of power or any other party".[91]

43. Yet Government officials may seek to instrumentalize existing disciplinary bodies to discourage or punish challenges to State authority or malfeasance. Alternatively, captured courts or institutions may seek to create new disciplinary institutions or to expand the reach of existing ones to include politically-inflected infractions. The mandate has expressed concern about regulations proposed in Israel to give the Bar Association's disciplinary body broad ability to suspend lawyers for protected political speech without due process guarantees.[92]

44. Disciplinary sanctions—including suspension or removal—may be imposed on individual judges in ways that undermine human rights and democratic values, such as when judges are subject to disciplined for work to uphold the human rights of groups experiencing social opprobrium. Judges may experience discipline in apparent reprisal for their opinions in high-profile electoral cases, or when speaking on issues related to the functioning of the judiciary. In a case in the United States of America, the mandate received allegations that a judge was subject to investigation for speaking out against racial injustice within the legal system.[93]

45. Submissions to the mandate for this report describe cases in which judges allegedly have been removed for objecting to legislative amendments,[94] for imposing convictions in political corruption cases,[95] or for challenging corruption in international courts.[96] In some instances, removal allegedly occurred without due process.[97]

46. Prosecutors may also be removed for improper political reasons, compromising their ability to act impartially, especially in cases involving prominent political figures.[98] Prosecutors have been subject to discipline, removals, and arbitrary detentions that could amount to retaliation for anti-corruption work, forcing some into exile.[99]

47. Lawyers, too, are vulnerable to politically-motivated disciplinary proceedings and sanctions. Disciplinary processes that can lead to the revocation of a lawyer's license to practice can be powerful tools for Governments to interfere with the work of lawyers, especially "those dealing with cases against the State or representing causes or clients that are unpopular with the existing regime."[100] Lawyers have also had

90 Basic Principles on the Role of Lawyers, Principle 28.
91 A/73/365, para. 67.
92 AL ISR 3/2024; Adalah, "Crackdown on Freedom of Speech of Palestinian Citizens of Israel (2023)".
93 AL USA 5/2024; NAACP, "Civil Rights Organizations Stand with North Carolina Supreme Court Justice Anita Earls".
94 Submission of Romanian Judges Association Forum.
95 Submission of Be Just.
96 Submission of EUI.
97 Submission of IAHRAG, Nulai, Cristosal, DPLF.
98 Submission of Anita Dywaba.
99 Submission of Be Just, SJS, DPLF.
100 A/73/365, para. 71.

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their licenses removed in reprisal for their work to defend Government opponents.

48. In other cases, disciplinary proceedings against lawyers have been enabled or initiated—sometimes resulting in disbarment or suspension—following statements that amount to the legitimate exercise of freedom of expression. These include statements advancing women's rights; supporting the right to self-determination; advocating for democracy; or calling for reform of a monarchy. In Equatorial Guinea, a lawyer was suspended from practicing law after sharing a video expressing her views on the country's judicial system, highlighting its shortcomings and encouraging judges to be more independent.[101] Such punishments may undermine democracy by reducing the variety of perspectives given voice in civic spaces.

49. Lawyers may also be punished simply for doing their job. Submissions report that lawyers have been suspended or disbarred for arguing for the acquittal of their clients, for "insulting" judges through their work representing detained clients,[102] or for calling for the release of political prisoners[103]; some of these disciplinary actions have allegedly come at the request of Ministries of Justice.[104]

50. The politically motivated disciplinary actions described in this section risk corrosion of the ability of the justice system to fulfil its essential democratic role, as well as on public trust in the justice system. Other judges may experience a "chilling" or "deterrent effect", which is "likely to influence the content of their decisions", reduce judicial independence, and diminish the rule of law.[105] Similarly, prosecutors may hesitate before pursuing politically-sensitive investigations or charges. Lawyers and CJWs could become reluctant to work with individuals who are out of favour with the Government, or pursue cases that challenge State authority and protect fundamental democratic rights.

3. Manipulating conditions of service

51. International norms require States to provide adequate resources to enable public justice officials to carry out their work. Principle 11 of the Basic Principles on the Independence of the Judiciary provides that adequate remuneration and conditions of service for judges shall be secured by law. A similar requirement—for reasonable conditions of service to be secured by law, published rules, or regulations—is set out in guideline 6 of the Guidelines on the Role of Prosecutors. These provisions are aimed at ensuring that the political branches of government cannot improperly influence judges or prosecutors by degrading the environment and conditions required for their work.

52. Despite these clear norms, judicial resources and security arrangements have been changed in circumstances that suggest attempts to influence the behaviour of judges or prosecutors. In some States, security protections have been withdrawn from individual judges hearing high-profile or politically sensitive cases. Submissions also describe cases in which Governments have sought to reduce the

101 International Observatory of Lawyers, "Gemma Jones"; https://protect-lawyers.org/en/item/gemma-jones/; GNQ 1/2024.

102 Submission of SHOAA for Human Rights.

103 Ibid.

104 Submission of Initiative 2018.

105 European Court of Justice, Case C-791/19, para. 157; Duncan, Allyson and John Macy. "The Collapse of Judicial Independence in Poland: A Cautionary Tale", *Judicature*. 104:3, (2020-21).

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overall resources available to the judiciary for benefits and security amid rhetorical attacks on judges and the judiciary as a whole.[106]

53. Another form this undue influence may take is the transfer of prosecutors and judges to locations viewed as under-resourced, dangerous, or otherwise undesirable.[107] Submissions made to the mandate for this report speak to the widespread perception of such transfers as punishment, retribution, or "warning".[108] In other instances, the allocation of cases may be manipulated to ensure "politically sensitive cases" are assigned to judges seen as sympathetic to the Government and/or that judges who hold an unfavourable disposition to Government policies are excluded from hearing these cases.[109] Such acts undermine the rule of law, and the principle that all people are entitled to equal protection, without discrimination, before the law.

C. Attacks and interference against justice operators

54. Judicial and legal personnel should be able to carry out their duties without fear for their or their family's physical safety or freedom. International norms affirm that States must protect the safety and security of justice actors and their families.[110] Not only must States refrain from killing, disappearing, physically attacking, unlawfully detaining, or otherwise harassing justice operators, they should also provide sufficient security protections for justice personnel who may face such attacks by non-state actors and parties to litigation before them. States must also refrain from disparaging or harmfully labelling justice actors, which can induce a permissive environment for physical attacks by non-State actors.

55. In this section, the Special Rapporteur considers circumstances in which attacks and interference against justice operators, or the failure to protect them from such acts, may constitute politically-motivated reprisal for their work to uphold human rights and the rule of law. Such attacks may also be designed to discourage or dissuade justice actors from taking such action in the future. In either case, the capacity of the justice system to defend democracy is undermined.

1. Government disparagement and harmful labelling

56. Disparagement and labelling by Government officials of judges, prosecutors, and lawyers may interfere with their independence and sew disdain among the public. The Rapporteur emphasizes that vigorous critiques of reasoning, disagreements with a decision, or expressions of dismay concerning a case outcome by members of the public are often appropriate, as disagreement is inherent to democratic governance. However, when Government officials launch ad hominem attacks, disparage personal characteristics or identities, describe justice workers using degrading or humiliating terms, or refer to them as "enemies", such comments cross the line, often constituting targeted interference.

57. Repeated and unsupported disparagement can suggest calculated attempts to intimidate or influence judges. In Poland, the 2017 "Fair

106 Submission of Instituto Internacional de Responsabilidad Social y Derechos Humanos.

107 AL COL 7/2023.

108 Submission of DPLF.

109 Submission of ICJ regarding India.

110 Basic Principles on the Independence of the Judiciary, Principle 11; Guidelines on the Role of Prosecutors, Guideline 5; Basic Principles on the Role of Lawyers, Principle 17.

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Courts" campaign, led by a foundation created by the ruling party and State-owned corporation, utilized billboards, advertisements on television and social media, and a dedicated portal to depict judges as "the enemy" of Polish people and an evil in Polish society.[111] The mandate has also shared concern about high ranking Israeli government officials publicly labelling a specific judge as a "domestic enemy" and an "enemy from within" following a decision to release defendants who oppose the government.[112]

58. The President of Mexico has singled out judges he disagrees with as "corrupt" or labelled them with other disparaging terms during daily press conferences. In some cases, these accusations have reportedly been followed by investigations or online harassment. In an unrelated case, the Inter-American Court of Human Rights has warned that similar statements by public officials attacking judges, especially those in high-ranking positions, may amount to interference with judicial independence, particularly when coupled with threats of legal proceedings or disciplinary proceedings.[113] In the United States, Donald Trump's attacks on individual judges when he was president have been widely reported.[114]

59. Submissions and consultations for this report described cases in which lawyers have been labelled as "traitors" or "foreign agents" when they represented politically sensitive clients or took on human rights matters.[115] Bar Associations have called attention to UK Government officials labelling immigration and other human rights lawyers as "lefty" or "abetting criminal gangs", with some lawyers reporting death threats after the widespread publication of these comments.[116] Submissions for this report included similar concerns arising in multiple countries.[117]

2. Harassment and threats

60. The mandate has repeatedly expressed concern about harassment and threats against judges, prosecutors, lawyers, and CJWs. In Ecuador, justice personnel—including judges, prosecutors and court officials—have been the victims of violent attacks and intimidation.[118] In Guatemala, repeated acts of intimidation, attacks and reprisals have taken place against judges and prosecutors, especially those overseeing corruption and human rights cases.[119] Reprisal has sometimes taken on

111 A/HRC/38/38/Add.1, para. 19; Judgment of 5 June 2023, *Commission v. Poland (IV),* C-204/21.

112 AL ISR 3/2024.

113 Cyrus R. Vance Center for International Justice and Fundación Barra Mexicana Joint Committee, "Seguimiento a los Ataques a la Independencia Judicial en México"; submission of Fundacion Justicia que Queremos; *Apitz Barbera y otros v.Venezuela*, judgment of 5 August 2008, para. 131.

114 Nelson, Michael J., and James L. Gibson. "Has Trump Trumped the Courts?" *New York University Law Review Online* (2018); Kromphardt, Christopher D. & Michael F. Salamone, "Unpresidented!" or: What happens when the president attacks the federal judiciary on Twitter, Journal of Information Technology & Politics (2021).

115 Submission of SHOAA for Human Rights.

116 Submission of the Law Society of England and Wales; McMillan, Anne, "The Global Assault on the Rule of Law", International Bar Association (September 14 2022). Available at: https://www.ibanet.org/The-global-assault-on-rule-of-law.

117 Submission of Romanian Judges Association Forum.

118 IACHR, Ecuador: CIDH condena violencia política y alerta ataques a la democracia;.

119 IACHR. Annual Report of the Inter-American Commission on Human Rights (2022), Chapter 4.B. Guatemala, para. 8.; See IACHR, Resolution

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a gendered form, as in the leaking of female judges' private information online.

61. The mandate has also expressed concern regarding physical, legal and digital threats and harassment targeted towards private lawyers and CJWs who are upholding democratic values and human rights. In Bangladesh, a lawyer was reportedly threatened and harassed by the Government, apparently for defending the rights of ethnic, religious, and LGBTIQ+ minorities and opposition politicians.[120] In the Russian Federation, lawyers defending anti-war protestors experienced harassment and intimidation from law enforcement.[121] The mandate has received allegations concerning similar threats and harassment of lawyers—either by Government personnel or in circumstances where the Government has allegedly provided inadequate security measures to protect against non-state actors—in Lebanon,[122] Pakistan,[123] and Venezuela.[124] In the Philippines, the mandate has been gravely concerned by the ongoing "red-tagging" of lawyers and CJWs who work with clients who are members of marginalized communities.[125] Recognizing the important role of human rights defenders in strengthening democracy, the Inter-American Court of Human Rights recently imposed on States a "special duty of protection" to defenders, including a reinforced obligation to prevent attacks or intimidation against them, mitigate existing risks, and adopt and provide adequate and effective protection measures in such risk situations.[126]

62. Submissions for this report have underlined the increased pressure on lawyer-client confidentiality due to advanced surveillance technologies. Participants in regional consultations reported instances of governmental use of surveillance software against lawyers and tapping of communication networks.

3. Arbitrary detention, torture, enforced disappearance, physical attack and assassination

63. Judges and prosecutors have been arbitrarily detained and sometimes subjected to temporary disappearance when their actions displeased other branches of the State. Similarly, the prosecutions of lawyers discussed earlier in this report are sometimes initiated with acts of arbitrary detention or enforced disappearance. In other cases, lawyers may be held without charge, or may face charges related to national security.

64. Submissions for this report have underscored that judges and prosecutors are sometimes subjected to torture or cruel, inhuman and degrading treatment or punishment in connection with their efforts to

48/2023, Precautionary Measure No. 574-23 Cesar Bernardo Arévalo de León and Karin Herrera Aguilar regarding Guatemala (2023); AL GTM 3/2021.

120 UA BGD 1/2023; Council of Bars and Law Societies of Europe (CCBE), "Continuous threats and harassment against lawyer Shahanur Islam and his family" (7 July 2023).

121 AL RUS 6/2022; ICJ, "Access to Lawyers for Anti-War Protestors in the Russian Federation" (June 2022).

122 JAL LBN 8/2021; Geneva Bar Association, Letter of concern (2022).

123 AL PAK 4/2023; IBAHRI, "IBAHRI concerned about the discrimination of Ahmadiyya lawyers in Pakistan" (2023).

124 JAL VEN 9/2021.

125 AL PHL 2/2023. Regarding the use of red-tagging, see Special Rapporteur on freedom of opinion and expression, preliminary observations (February 2024); Report of the High Commissioner (July 2020).

126 I/A Court H.R., *Miembros de la Corporacion colectivo de abogados "José Alvear Restrepo" v. Colombia,* Judgment of 18 October 2023, paras. 972-981.

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uphold democratic norms.[127] And finally, lawyers have been assaulted, tortured, and killed in circumstances that have been inadequately investigated. Such cases have occurred on numerous occasions in Türkiye.[128] In the Philippines, one human rights lawyer, Juan Macababbad, was killed, while another, Angelo Karlo Guillen, survived an attempt on his life.[129] In Eswatini, lawyer and pro-democracy advocate Thulani Maseko was assassinated at his home and in front of his family.[130]

65. The Special Rapporteur urges States to ensure that these terrible crimes are investigated. She stresses that justice personnel should receive protection, respect and support commensurate to the vital role they play in upholding the rule of law, defending fundamental human rights, and supporting an environment that allows meaningful participatory government to flourish.

VI. Conclusions and recommendations

66. **International law requires all organs of the State to actively respect, protect and ensure human rights and to uphold the principles of judicial independence, participatory governance and the rule of law. These principles are most effective when they are enshrined in constitutional provisions, statutory law, and administrative regulations; protected by independent courts, judges, and other state actors; actively defended by civil society; and seen as a core democratic value by the public at large.**

67. **In recent years, the role of independent justice systems in protecting participatory governance has come under attack from political actors, including through derogatory speech and negative rhetoric. Regrettably, in some countries, these arguments have gained traction; particularly the contention that judicial checks and balances undermine the capacity of Governments to enact the popular will. In this framing, judges, prosecutors and lawyers are portrayed as part of a remote "elite" or even, in the most extreme examples, as "enemies" of the people. Where these characterizations take hold, communities may be more receptive to the assertion that political branches should have increased influence, and even control, over justice actors.**

68. **To protect the separation of powers, the rule of law and participatory governance, more must be done to revitalize public trust in justice institutions and to defend justice actors and their indispensable role in safeguarding democracy. The most important step any State can take is to fully respect and ensure the independence of the judiciary, the autonomy of prosecutors, the exercise of the legal profession, and the contributions of CJWs. States should pay special attention to the roles these institutional and individual actors play in safeguarding**

[127] Submission of SJS, 29 Principles, Committee for Justice and European Front for Human Rights.

[128] AL TUR 5/2023; CCBE, Letter of 5 June 2023; TUR 8/2023.

[129] JAL PHL 2/2023; Human Rights Watch, World Report 2022; Amnesty International, "Philippines: Surge in killings of lawyers and judges shows justice system "in deadly danger"", (26 March 2021).

[130] AL SWZ 1/2023; UNOHCHR, "Türk condemns killing of Eswatini human rights lawyer, urges accountability" (23 January 2023); Human Rights Watch, "Eswatini: Activist, Rights Lawyer Brutally Killed" (25 January 2023).

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fundamental democratic processes such as elections and referenda, public assemblies and protests, and civic discourse and debate.

69. **Enhancing the extent to which courts reflect—and engage—the communities they serve can also make these systems more resilient to attack. Increasing diversity on the bench, in the prosecutorial service, and among lawyers may assist to combat the populist framing of these professions. States and justice personnel can also democratize justice by ensuring that democratic principles are embodied in justice systems. Increasing the accessibility of courtrooms and procedures, improving the transparency of formal justice processes, and explaining the outcome of these processes in clear, comprehensible language, are important first steps. However, more innovative and unconventional approaches should also be pursued. When citizens feel seen by and connected to their justice systems, these systems are in turn recognized as central to democracy and human rights, and worthy of protection.**

70. **To these ends, the Special Rapporteur makes the following recommendations to States.**

(a) **Any act of violence or threats of violence, or any form of intimidation, coercion or inappropriate interference against judges, prosecutors, lawyers or CJWs should be duly investigated. Likewise, steps should be taken to prevent their future recurrence. States have a special duty to ensure the personal safety of judges, prosecutors and their families, and to provide necessary counselling or psychological support, when appropriate.**

(b) **Concerning the independence of the judiciary, the Special Rapporteur recommends:**

(i) **States that do not have a judicial council or a similar independent institution should consider establishing one. The judicial council should operate transparently and be free of any undue influence or pressure from the legislative or the executive branches of government.**

(ii) **Decisions on the appointment and promotion of judges must be taken through a transparent process by a judicial council or an equivalent body independent of the legislative and executive branches of powers. The procedure for the selection and appointment of judges must be based on objective criteria previously established by law or by the competent authority.**

(iii) **Judicial councils or an equivalent independent body, rather than the legislature or the executive branch, should —as far as possible—be entrusted with general responsibilities with regard to the administration of the court system (including judicial assignments and transfers, case allocation and transfer, and court scheduling), the preparation of the judicial budget and the allocation of budgetary resources.**

(iv) **The responsibility for disciplinary proceedings against judges should be vested in an independent authority composed primarily of judges, such as a judicial council or a court, and not entrusted to the legislative or executive branches.**

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(c) **Concerning the proper functioning of the prosecution service, the Special Rapporteur recommends:**

(i) **The prosecutor and the prosecution service should be functionally autonomous from the legislative and executive branches, irrespective of institutional structure. States should ensure that prosecutors can perform their duties in an independent, objective and impartial manner, so that criminal justice is not instrumentalized in service of Government aims.**

(ii) **Prosecutors must be insulated from politically-motivated punishment or reward for undertaking their professional duties. The security of tenure of prosecutors should be ensured by law and guaranteed. Promotion of prosecutors should be based on objective factors and decided through fair and impartial processes. The transfer of prosecutors to other posts should not be used as a threat. And the dismissal of prosecutors should be based on law or regulations and subject to independent review.**

(d) **To protect the free exercise of the legal profession, the Special Rapporteur recommends:**

(i) **States should recognize in law the establishment of bar associations. The law should include, at a minimum, provisions relating to the independence of such associations, their composition and the definition of their functions; these provisions should be elaborated and augmented with the meaningful participation of the legal profession.**

(ii) **The authority to issue a licence to practise law should rest with the bar association, and the procedure for admission to the legal profession should be based on objective criteria previously established by law or by the bar association itself.**

(iii) **The body responsible for discipline should be free from any influence or pressure from the legislative or the executive branches of power or any other party.**

(iv) **Disbarment should only be imposed in the most serious cases of misconduct, as provided in the professional code of conduct, and only after a due process before an independent and impartial body granting all guarantees to the accused lawyer.**

(e) **To ensure that CJWs can create awareness about the law, secure remedies for rights violations and build trust in institutions, which in turn strengthens democracy, the Special Rapporteur recommends that States should:**

(i) **Remove legal or regulatory obstacles for CJWs, recognize CJWs as human rights defenders and make protection schemes and security resources available to CJWs where needed.**

(ii) **Put an end to, or work to prevent, the use of SLAPP suits, defamation charges or hate speech charges against CJWs in reprisal for their work supporting rights-holders to know, use and shape the law.**

(iii) **Support the legal empowerment work of civil society organizations, while respecting their independence, by**

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resourcing funding mechanisms that emphasize grassroots justice work.

71. **The Special Rapporteur urges States and all actors in the justice system—judges and judicial associations; prosecutors; lawyers and bar associations; and CJWs—to take a public stance in support of judicial independence, the separation of powers, the rule of law, and participatory governance. Important lessons for each of these actors have been offered by those engaging with the mandate for this report. In this section, the Special Rapporteur draws from these lessons to set forth recommendations to these actors directly.**

(a) **The Special Rapporteur recommends that the judiciary:**

(i) **Be alert to:**

- **Changes imposed by the Government that may undermine judicial independence and separation of powers.**
- **Administrative or management decisions that appear to reward or punish judicial behaviour based on political criteria. Adopt protection measures and transparent rules concerning allocation of cases (randomized, where possible), assignment of chambers or other resources.**

(ii) **Carefully scrutinize cases in which allegations are made or suspicions arise concerning the improper instrumentalization of the administration of justice.**

(iii) **Enhance opportunities for communities to engage with court processes, including through expanded space for public hearings, publication of accessible summaries of judgments, livestreaming, and the formation of stakeholder groups to monitor implementation of judgments, especially in cases of great public interest or impact.**

(b) **The Special Rapporteur encourages lawyers and bar associations to:**

(i) **Protect the freedom of expression and association of lawyers, objecting to attempts to crack down on lawful and ethical speech and expressive activity by lawyers.**

(ii) **Ensure that, if multiple bar associations exist in one State, they coordinate to align their approaches to key issues concerning the legal profession and its relationship with the State, in order to avoid undermining the power and authority of bar associations.**

(iii) **Make clear that lawyers should never be subject to criminal charges for carrying out their profession according to recognized professional duties, standards and ethics.**

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